

“Supplanting the Law and Local Education Authority Through Regulatory Fiat”
U.S. House of Representatives Committee on Education and the Workforce
Subcommittee on Early Childhood, Elementary, and Secondary Education
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Thank you Chairman Rokita, Ranking Member Fudge, and members of the Subcommittee for the opportunity to testify today, and thank you for your work to approve the Every Student Succeeds Act (ESSA). This new law will allow Nevada to build on our existing education improvement efforts, while at the same time setting high standards for student success.

One of the most important aspects of ESSA is its focus on equity. We must ensure all students have the opportunity to succeed, and that states and districts are held accountable for clear and measurable results. Governor Brian Sandoval and the Nevada Legislature have taken a number of steps in Nevada to promote equity and improve student achievement, including:

- Additional financial and program supports for English learners, known as the Zoom Schools Program,
- Additional financial and program supports to students living in the poorest zip codes in Nevada, known as the Victory Schools Program,
- Support for effective literacy instruction to raise student achievement in reading, known as the Read by Grade Three Program,
- Several new programs for consistently underperforming schools including an Achievement School District which allows the state to intervene in failing schools, reflecting an intolerance for persistent failure,
- Social Worker in Schools Program, which places social workers in schools with the greatest need,
- Providing professional development and student access to one-on-one technology, through our Nevada Ready 21 Technology Program, and
- Addressing educator quality by providing professional development and making improvements to the educator pipeline through the Great Teaching and Leading Program, the Governor’s Nevada Teach Scholarships, and new teacher incentives.

Each of these programs represents a substantial financial investment by the state to promote equity for our 460,000 students and schools. For example, our Victory Schools Program supports 35 schools and over 21,000 students and their communities in providing \$25 million per year to support schools in our state’s poorest areas. Our efforts to see dramatic improvement in struggling schools includes over \$15 million targeted to support principal effectiveness and recruiting new high quality school leaders to the state. The Zoom Schools Program supports over 60 schools and nearly 45,000 students in providing an additional \$50 million per year to support English language acquisition and academic proficiency for English learners. All told, Nevada’s legislature put over \$343 million of additional funding into education – in 2016 and 2017 -- and intends to grow that investment on a bi-annual basis with an invest – evaluate – reinvest – evaluate model.

It is these investments and my Governor and state's commitment to equity that lead me to testify here today about my concerns with the Department of Education's proposed supplement not supplant regulations.

The Department's goals are laudable. It is clear underperforming schools need more funding to support their students' needs. But imposing sweeping new federal mandates on how school districts must spend their state and local funds, in addition to the complicated way the proposed regulations approach equity and school funding, could actually *hurt* state and local efforts to provide equity for all students.

First, the regulations look only at the amount spent in Title I schools versus non-Title I schools. The total dollars spent in each school is certainly part of equity, but it is not the only measure. The proposed regulations do not take into account other equity measures, such as improved access to educational opportunities like Advanced Placement, career and technical education programs, the arts, and effective teachers, and they could in fact harm state and local efforts to promote these measures to benefit students.

Defining equity so narrowly also conflicts with a key principle of ESSA, which is to empower states and districts to set the best path for student achievement based on their needs. As you can see from the progress we are making in Nevada on equitable funding, we, like other states, are ready to take on that challenge. And we are also prepared to be held responsible for our students' results. But approaches to accountability and funding can and should vary depending on state, district, and student needs.

As a practical matter, I am concerned the proposed regulations could frustrate a number of equity and school quality efforts in our state. For example:

- Curtailing state and locally-driven equity efforts. There exist a number of approaches across Nevada to promote equity for students. It is unclear from the proposed regulations the impact on non-Title I magnet or other choice programs like Career and Technical Academies. Recent efforts in our largest school district to expand access for high school students to attend specialized programs within non-magnet schools that include: Career Tech Education, Advanced Placement, National Academy Foundation, and Project Lead the Way. The proposed regulations could result in significant restructuring of these opportunities to all students and support a perverse incentive to lower the number of offerings to comply with fiscal rules.
- Hindering the move to more equitable funding formulas that appear to not fit the regulatory parameters. In 2013, Nevada began a transition to provide additional funding in the form of a "weight" to students that are: English language learners, in poverty, special education, and gifted and talented. Present law requires this transition to be complete in FY2022. The proposed regulations provide for some exclusions; however, the ambiguous language and deference to the U.S. Department of Education to make determinations may adversely impact my state's plan to provide additional resources. For example, funding for English language learners is entering into the fourth year of implementation. Eligibility of funding is not contingent upon Title status,

rather funding follows the student. It is unclear to me whether or not the proposed regulations would impede the state's ability to carry out this concentrated funding plan.

- Exacerbating of teacher shortages and curtailing Nevada efforts to fill every classroom with an effective educator. We are experiencing a serious teacher shortage in Nevada and applied policy and funding to incentivize teachers to teach in Nevada, to schools with the highest vacancies, and classrooms serving our most vulnerable students. It is unclear if some of our solutions to address the teacher pipeline will comply with the rule, such as application of scholarship dollars to alternative routes to licensure and a clear emphasis on expanding teacher recruitment to diverse candidates.

Second, districts will have to manage spending centrally to comply with the proposed regulations, meaning any decision that affects spending -- which is virtually all decisions -- will have to be vetted through a district finance office for a compliance check. This could affect everything from school hiring and purchasing to curricular decisions. As a former school principal, I am deeply concerned that school-level decisions -- made by the people closest to the students -- could be overridden by central level staff to comply with these proposed regulations.

Districts might have to manage compliance by moving teachers or other resources close to, or even after, the start of the school year to maintain the spending balances. Research shows stability is important, particularly in low-income schools, and that last minute changes are bad for students. In Las Vegas alone the transiency rate is 40 percent, meaning almost half of the over 320,000 students begin the year at one school and end it at another. Unfortunately, transiency is strongly correlated with poverty. Under the proposed regulations, it is unclear how I would advise school districts in Nevada to remain compliant without making last-minute decisions to force teachers to transfer to another school, or move technology from one building to another. We know this is bad practice in education, and I am concerned we would have to make these bad decisions to comply with these proposed regulations.

Central-office management means efforts to give schools more autonomy might be curtailed. Indeed, a bi-partisan interim committee just passed a Plan for the Reorganization of Clark County School District (Plan). At its core the Plan shifts control from the central service of the district to each local school including decisions related to capital (human and fiscal), operations, and academic programming. Each school would have a team comprised of the principal, parents, and teachers that would establish goals and objectives for the school in an effort to better meet the needs of the kids in that school. For a number of reasons, it is unclear whether this Plan would comply with the proposed supplement not supplant rule, so this locally-driven effort could be stymied by the proposed rule.

My last concern is about what the regulations do not say. For example, the rule does not define many important terms like what it means to distribute "almost all" of a district's money to schools, or what it means to have a "high proportion" of disadvantaged students in a non-Title I school to qualify for an exemption. The regulations also do not address key services districts support centrally that are not usually (or easily) allocated to schools like building maintenance and repair needs, transportation, special education services, staff that work in more than one school, or multi-year procurements among

others. And importantly, the rule does not address what a state educational agency (SEA) should do if there is non-compliance or how to address conflicts between an SEA's federal enforcement obligations and state or local laws that might limit a district's ability to comply with the proposed regulations. While these seem like technical issues, they have three important equity implications:

First, how a district treats central costs in its calculations will have a dramatic effect on what school-level spending looks like in a given district. If the rule does not clearly and specifically define how various costs should be treated, then the rule will be implemented in wildly different ways across the country. This was one of the problems with the old supplement, not supplant rule. Without clear rules, calculations of school spending can be distorted, undermining both equity and transparency.

Second, if the rule lacks clear standards, auditors will rely on their own judgment, which raises audit risks. This could lead to inconsistent enforcement because of differing perspectives on what compliance requires.

Third, SEAs are responsible for overseeing local compliance with supplement not supplant, and the proposed rule would impose a substantial new burden on state capacity. The complexity and ambiguities of the proposed rule means my SEA will have to put more resources into administrative oversight of this rule, which will take away the resources and capacity we need to help schools improve achievement for kids.

I care deeply about equity, and am working closely with my Governor and state legislature to promote greater equity for all kids in Nevada. We have made great strides in my state, investing more than \$343 million in the last two years alone to create a more equitable education system. The Department's proposed supplement not supplant regulations will not help Nevada achieve its goal of equity for all kids. I urge the Department to reconsider its proposed rule and to interpret supplement not supplant in a way that is both consistent with the spirit of the Every Student Succeeds Act and promotes equity.